

OFFICE OF PROFESSIONAL RESPONSIBILITY
INTERNAL REVENUE SERVICE
DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

DIRECTOR, OFFICE OF
PROFESSIONAL RESPONSIBILITY
Complainant

Complaint No. 2006-23

v.

MARTIN M. CHANDLER
Respondent

DECISION GRANTING THE DIRECTOR, OFFICE OF PROFESSIONAL
RESPONSIBILITY'S MOTION FOR SUMMARY JUDGMENT

Complainant, the Director, Office of Professional Responsibility, Internal Revenue Service (IRS) filed a Complaint in this matter on December 7, 2006. Respondent, Martin M. Chandler filed his Answer to the Complaint on December 22, 2006. On the basis of the Complaint, Answer and sworn statements of the parties, the following facts have been established:

1. Respondent is a certified public accountant in the State of A. He was born on Date 1 and has been a certified public accountant since 1964.
2. As a certified public accountant, Respondent is eligible to practice before the Internal Revenue Service by virtue of 31 C.F.R. Section 10.3(b) (1994) and 31 Section 10.3(b) (2002) and (2005).
3. Respondent has engaged in practice before the Internal Revenue Service and is subject to the disciplinary authority of the Secretary of the Treasury and the Office of Professional Responsibility. 31 C.F.R. Sections 10.2(e) and 10.50 (1994), and 31 C.F.R. Sections 10.2(d) and 10.50(a) (2002) and (2005).
4. Respondent's last address of record with the Office of the Director of Professional Responsibility is #1 Practitioner Address.

Tax Year 2000

5. Respondent was required to file a federal tax Form 1040 for tax year 2000.
6. Respondent was required to file a federal tax Form 1040 on or before October 15, 2001, after receiving two extensions of time to file.
7. Respondent had not filed his federal tax Form 1040 as of September 9, 2002, when the IRS prepared a substitute return.
8. While Respondent filed amended returns on August 8, 2003 and September 27, 2006, he did not timely file his federal tax return for tax year 2000.

Tax Year 2001

1. For tax year 2001, Respondent had an adjusted gross income of \$69,724.00
2. Respondent was required to file a federal tax Form 1040 for tax year 2001 because he had gross income of at least \$15,200.00
3. Respondent was required to file a federal tax Form 1040 for tax year 2001 on or before April 15, 2002 because no extensions to file were requested.
4. Respondent did not file a federal tax Form 1040 for tax year 2001 prior to October 14, 2003.
5. IRS does not concede that Respondent filed a federal tax Form 1040 for tax year 2001 at any time.

Tax Year 2003

1. Respondent had adjusted gross income of \$89,752.00 for tax year 2003.
2. Respondent was required to file a federal tax Form 1040 for tax year 2003 because he had gross income of at least \$17,500.00
3. Respondent was required to file a federal tax Form 1040 for tax year 2003 on or before April 15, 2004 because no extensions to file were requested.
4. Respondent filed his Form 1040 for tax year 2003 on May 23, 2005.

Subsequent procedural history of this case

Complainant initially prayed that Respondent be suspended from practice before the Internal Revenue Service for 36 months pursuant to 31 C.F.R. 10.50 (1994) and 31 C.F.R Sections 10.50(a) and 10.70(b) (2002) and (2005). On May 4, 2007, Complainant filed a motion for summary judgment. In that motion it withdrew charges alleging that Respondent had not paid all of the taxes he owed for tax year 2000 and reduced its requested penalty from a 36-month suspension to a 33-month suspension. Attached to Complainant's motion was the affidavit of Don F. Svendsen, Jr., Deputy Director, Office of Professional Responsibility, Internal Revenue Service, setting forth the Complainant's reasons for seeking a 33-month suspension.

On May 9, 2007, I issued an order to show cause why the Director's motion for summary judgment should not be granted. Respondent filed responses on May 9, and May 18, 2007 and submitted an affidavit regarding his personal background on May 2, 2007. I also conducted a conference call with the parties on May 30, 2007.

It is evident that there are no material facts in dispute in this matter. Respondent submits that Complaint should not and has no legal basis for suspending him from practice before the IRS for failure to timely file his federal tax Form 1040 for tax years 2000, 2001 and 2003.

Analysis

In large part, I defer to the judgment expressed in Mr. Svendsen's affidavit. I conclude that it is reasonable for Complainant to insist that tax practitioners be compliant with their own personal tax obligations in order to represent other taxpayers before the IRS. Moreover, Complainant has lawfully imposed such a requirement in 30 C.F.R. Section 10.51. This provision provides that a practitioner may be censured, suspended or disbarred from practice before the IRS for incompetence and disreputable conduct. Section 10.51(f) provides that "incompetence and disreputable conduct" includes "willfully failing to make a Federal tax return in violation of the revenue laws of the United States."

As Mr. Svendsen states in his affidavit, a failure to make a Federal tax return in violation of the law includes a failure to file a return in a timely manner. A willful failure to timely file is "a voluntary, intentional violation of a known duty." It is axiomatic that a certified public accountant is aware of the obligation to file his or her federal tax return by the due date. Thus, I find that Respondent willfully failed to make a Federal tax return in violation of the revenue laws of the United States for tax years 2000, 2001 and 2003.

In his affidavit, Mr. Svendsen argues that our income tax system requires cooperation and compliance from practitioners. I agree with his assessment that to fail to appropriately sanction practitioners who willfully fail to comply with our nation's revenue laws undermines the system of efficient tax administration. Failure to sanction such practitioners sends a message to those they represent that they may be free to ignore the requirements of the revenue laws, such as the well-known duty to file by April 15 of the year following the tax year or within the period of an extension to file. I therefore conclude that Respondent should, as requested by the Complainant, be suspended from practice before the IRS.

The Length of the Suspension

In praying for a 33-month suspension, Complainant relies in part on Respondent's lack of contrition. I am inclined to give this little weight. I view Respondent's lack of contrition as a mere indication of his desire not to be sanctioned. Given the fact that on this record there is no indication that Respondent owes back taxes and in view of the fact that he is approximately 72 years old, I view a 33-month suspension as unduly harsh. Instead, I impose a suspension of 18 months. I deem this to be an appropriate sanction given the fact that Respondent failed to timely file his return for three tax years and that he was very late in filing in all three years. However, Respondent shall not be reinstated at the end of the 18 months unless he has filed all of his outstanding Federal tax returns and paid any outstanding Federal tax liabilities, or has entered into an installment agreement or offer of compromise which has been accepted by the IRS and with which Respondent has remained in compliance.

Conclusions of Law

1. The Respondent's eligibility to practice before the Internal Revenue Service is subject to suspension by reason of disreputable conduct.
2. The Respondent's repeated failure to timely file the required federal income tax returns constitutes disreputable conduct within the meaning of 31 C.F.R. 10.51(f). Such disreputable conduct warrants his suspension from practice before the Internal Revenue Service. Given Respondent's age and absence of evidence of outstanding tax liabilities, a suspension for a period of 18 months is reasonable.

Upon the foregoing findings of fact and conclusions of law and the entire record it is:

ORDERED that Martin M. Chandler is suspended from practice before the Internal Revenue Service for a period of eighteen (18) months.¹

Dated at Washington, D.C. June 1, 2007.

Arthur J. Amchan
Administrative Law Judge

OFFICE OF PROFESSIONAL RESPONSIBILITY

¹ Pursuant to 31 C.F.R. 10.77, either party may appeal this decision to the Secretary of Treasury within thirty (30) days from the date of issuance.

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v.

MARTIN M. CHANDLER
Respondent

CERTIFICATION OF RECORD

I, Arthur J. Amchan, Administrative Law Judge, certify that the attached materials consisting of:

1. Complaint dated December 7, 2006.
2. Answer dated December 22, 2006.
3. Notification of Assignment/Prehearing Order dated December 28, 2006.
4. Respondent letter of January 9, 2007 to Complainant.
5. Complainant's response to Prehearing Order dated January 31, 2007.
6. Notification of Hearing dated February 7, 2007.
7. Respondent letter to Complainant dated February 21, 2007.
8. Respondent letter to Judge dated February 22, 2007.
9. Complainant's response to Respondent's February 22, letter, dated February 27, 2007.
10. Respondent's letter to Judge dated March 5, 2007.
11. Respondent's letter to Complainant dated March 5, 2007.
12. Complainant's letter to Respondent dated March 9, 2007.
13. Respondent's letter to Complainant dated March 22, 2007.
14. Undated Notification of new hearing date, issued on or about April 5, 2007.
15. Respondent's May 2, 2007 letter to Complainant with attached affidavit.
16. Complainant's May 4, 2007 Motion for Summary Judgment.
17. Respondent's May 9, 2007 Response to the Motion for Summary Judgment.
18. Show Cause Order issued May 9, 2007.
19. Respondent's response to the Show Cause Order dated May 18, 2007.

constitute, to the best of my knowledge, the complete record in *Director, Office of Professional Responsibility v. Martin M. Chandler*, Complaint No. 2006-23.

Washington, D.C. June 1, 2007

Arthur J. Amchan
Administrative Law Judge

